IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5596 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SWASTIK TEXTILES ENGINEERS PVT. LTD.

Versus

DAULATRAM BABURAV

Appearance:

MR AK CLERK for Petitioner

RULE SERVED for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9,10,11

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/06/2001

ORAL JUDGEMENT

The present Special Civil Application is filed by Swastik Textiles Engineers Private Limited, the petitioner, for quashing and setting aside the

proceedings of Payment of Wages Application No.213 of 2000 filed by the respondents herein against the petitioner, which is pending before the Payment of Wages Authority, Ahmedabad. It is pointed out that the Payment of Wages Application No.213 of 2000 is filed by the persons whose names are mentioned in Schedule annexed to the said application. The application is produced at Annexure-D, which is at page 35 and the schedule to the application is produced at page 38 of the petition. The said schedule contains 11 names, namely, Daulatram Baburao, Naginbahi Dalsukhbhai, Mahendraprasad Bholaprasad, Narsinhbhai Ranchhodbhai, Dhanjibhai Ukabhai, Dhanjibhai Balubhai, Rameshbahi Arjanbhai, Mohd. Tahir Mohd. Ishaq, Boghabhai Tabhabhai, Hasmukhbhai S. Patel and Ibrahimbhai.

2 Mr A.K. Clerk, learned advocate for the petitioner submitted that these very respondents have had earlier, two rounds of litigations before the Labour Court and also before this Court. The services of these respondents were terminated by the petitioner-company by an order/notice dated 20.9.1980 wherein it is stated that on account of closure of second shift 33 workmen had to be terminated from services which included present 11 respondents. The said action of the petitioner-company was challenged by filing a complaint before the Industrial Tribunal being Complaint (IT) No.154 of 1980, 162 of 1980 and 172 of 1980. The said complaints were decided on merits on 27.11.1986. Being aggrieved of the said order dated 27.11.1986 present respondents filed Special Civil Application No.4604 of 1998 which came to be withdrawn.

3 The present respondents then filed Reference (LCA) No.1113 of 1990, which came to be decided by the Labour Court by an order dated 21.7.1998. Being aggrieved of that, the present respondents filed Special Civil Application No.10861 of 1998, which came to be decided by this Court (Coram: R.M. Doshit, J.) by an order dated 21.4.1999. The petition was dismissed in limine. Notice was discharged.

4 After having the aforesaid two rounds of litigations the present respondents filed present application under the Payment of Wages Act being Payment of Wages Application No.213 of 2000 through another Union, namely, "Akhil Gujarat General Majdoor Sangh." In the said application, no mention is made about the aforesaid litigation and the suppressing all those material facts, a case is sought to be made out that the services of the present respondents were terminated, no

date is mentioned of such termination. Schedule-A to the said application mentions a date of 5.5.2000, on that very date the present application was filed by the present respondents through "Akhil Gujarat General Majdoor Sangh," without clarifying anything as to whether it is the date of the termination or not. In the Schedule they have mentioned the heads under which they are entitled to get the amount from the petitioner-company like the wages due, salary for notice period, unemployment compensation, amount due towards overtime, leave encashment, bonus amount and gratuity amount.

5 Mr Clerk, learned advocate, has also produced a copy of the complaint filed under Section 2A of the Industrial Disputes Act, which was filed on 8th May 2000 bearing No.392 to 404 of 2000, in the schedule to that complaint the names of the respondents are mentioned.

6 Mr Clerk has made available a copy of Special Civil Application No.10861 of 1998 and submitted that the names of the petitioners of that Special Civil Application are the same as that of the present respondents. It is clear from the perusal of these two documents, namely, the memo of Special Civil Application No.10861 of 1998 and the award passed in Reference (LCA) No.1113 of 1990 that the present respondents are the persons who earlier had two rounds of litigations against the petitioner-company and suppressing details of those two litigations have filed the present application under the Payment of Wages Act. There cannot be better case of abuse of process of law. Though Rule was issued in this petition by an order dated 19th June 2000 wherein all these facts are set out in detail, which is duly served on the respondents on 18.7.2000, no appearance is caused. This Court made the interim relief absoluted on 24.9.2000 which was granted on 19th June 2000. Today also when the matter is called out for final hearing, nobody is present on behalf of the respondents. The respondents are duly served on 18.7.2000. There is no reason for which this Court shall wait for the respondents.

7 In the result, in view of the averments made in the petition and the submissions made by the learned advocate for the petitioner, the petition is allowed. Rule is made absolute. The Payment of Wages Application No.213 of 2000 is hereby quashed and set aside.

8 Taking into consideration the glaring facts of this case, each workman is ordered to pay a cost of Rs.750 to the petitioner-company for constraining the

company to file the present petition.

(Ravi R Tripathi, J.)
(mohd)